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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,480	12/21/2001	Robert K. Wagstaff	03756.001 (5073P)	9954

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EXAMINER

BALSIS, SHAY L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,480

Applicant(s)

WAGSTAFF, ROBERT K.

Examiner

Shay L Balsis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 8-27 is/are rejected.
- 7) ☒ Claim(s) 3,4,6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

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DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: paragraph 0029 reference number 702. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1, 2, 5, 8, 10, 12, 14, 15, 17, 20-22, 25-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner (USPN 6352545).

Wagner teaches a tongue cleaner comprising a handle, a neck emanating from the handle, a head region distal to the neck and a tongue brush located in the head region. The tongue brush includes a bristle base (22) having a top and bottom. On the top of the base is a plurality of flexible bristles (40) emanating from the bristle base. The bristles are different height generally in order of descending height. Some of the bristles have a curvature that causes them to curve toward the neck and some of the bristles

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are tapered from their proximal end to their distal end to present a pointed appearance. On the bottom of the base there is a plurality of tongue scraper blades (34, 38) that are positioned orthogonal to the handle's longitudinal axis. The bristles, tongue scraper and bristle base are formed as a single unitary component from the same material via injection molding. The tongue cleaner is molded from polyethylene, polypropylene, acetals, polycarbonates, etc. (col. 5, lines 17-23).

5. Claims 12, 14, 15, 17, 18, 21, 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Murayama (USPN 6102923).

Murayama teaches a tongue cleaner comprising a handle, a neck emanating from the handle, a head region distal to the neck and a tongue brush located in the head region. The neck is oriented at an angle of less than 180 degrees with the longitudinal handle (fig. 2b). The tongue brush includes a bristle base and a plurality of flexible bristles (not shown, col. 6, lines 18-28) emanating from the bristle base. The bristles are tapered from their proximal end to their distal end to present a pointed appearance and terminate in a common plane. On the base there is a plurality of tongue scraper blades (56) that are positioned orthogonal to the handle longitudinal axis. The bristles, tongue scraper and bristle base are formed as a single unitary component from the same material via injection molding. The tongue cleaner is molded from a polymeric plastic (col. 3, lines 62-68).

6. Claims 12, 14-15, 17-18, 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Millner (USPN 5766193).

Millner teaches a tongue cleaner comprising a handle, a neck emanating from the handle, a head region distal to the neck and a tongue brush located in the head region. The neck is oriented at an angle of less than 180 degrees with the longitudinal handle (fig. 3). The tongue brush includes a bristle base and a plurality of flexible bristles (28) emanating from the bristle base. The bristles are tapered from their proximal end to their distal end to present a pointed appearance and terminate in a common plane. The bristles that are closer to the tip of the head are longer than the bristles that are closer to the mid-portion

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of the head (col. 2, lines 59-65). Also at least some of the bristles are angled with respect the handle axis.

The bristles and the bristle base are formed as a single unitary component from the same material via injection molding. The tongue cleaner is molded from a polymeric plastic (col. 2, lines 36).

7. Claims 12, 14-18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen (USPN 2637870).

Cohen teaches a tongue cleaner comprising a handle, a neck emanating from the handle, a head region distal to the neck and a tongue brush located in the head region. The neck is oriented at an angle of less than 180 degrees with the longitudinal handle (fig. 1). The tongue brush includes a bristle base and a plurality of flexible bristles (53) emanating from the bristle base. The bristles are tapered from their proximal end to their distal end to present a pointed appearance and terminate in a common plane. The bristles and the bristle base are formed as a single unitary component from the same material via injection molding, while the remainder of the tongue cleaner is formed by a second material by a second injection molding (col. 3, lines 39-46). The tongue cleaner is molded from a rubber material (col. 3, lines 36).

8. Claims 12, 13-15, 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Rimkus (USPN 6015293).

Rimkus teaches a tongue cleaner comprising a handle with finger grips (38), a neck emanating from the handle, a head region distal to the neck and a tongue brush located in the head region. The neck is oriented at an angle of less than 180 degrees with the longitudinal handle (fig. 2). The tongue brush includes a bristle base and a plurality of flexible bristles (24) emanating from the bristle base. The bristles are tapered from their proximal end to their distal end to present a pointed appearance and terminate in a common plane. The bristles are of different lengths (fig. 2, bristles get longer as they approach the handle). The bristles and the bristle base are formed as a single unitary component from the same material via injection molding (col. 5, lines 14-17). The tongue cleaner is molded from a plastic material.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 12-15, 17-18, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebel (USPN 6032315) in view of Rimkus.

Liebel teaches a tongue cleaner comprising a handle, a neck emanating from the handle, a head region distal to the neck and a tongue brush located in the head region. The neck is oriented at an angle of less than 180 degrees with the longitudinal handle (fig. 1). The tongue brush includes a bristle base and a plurality of flexible bristles (8) emanating from the bristle base wherein the bristles terminate in a common plane. Additionally there is a tongue scraper (10) in the head region. The bristles and the bristle base are formed as a single unitary component from the same material via injection molding (col. 3, lines 23-30). The tongue cleaner is molded from a thermoplastic material such as polypropylene (col. 3, lines 33-35). Liebel teaches all the essential elements of the claimed invention however fails to teach that the bristles are tapered from their proximal end to their distal end. Rimkus teaches a tongue cleaning device with bristles that are tapered to a point. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use tapered bristles as taught by Rimkus on Liebel's tongue cleaner since tapered bristles provide a deep and thorough cleansing of the entire surface topography, including pores of the tongue.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner in view of Murayama.

Wagner teaches all the essential elements of the claimed invention as stated above however fails to teach an angle of less than 180 degrees with the handle's longitudinal axis. Murayama teaches a

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tongue cleaning device comprising a bend between the cleaning head and the handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to create a bend in the neck region as taught by Murayama on Wagner's tongue cleaner for ergonomic purposes and to facilitate access to the back of the tongue (col. 4, lines 1-15).

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner in view of Rimkus.

Wagner teaches all the essential elements of the claimed invention as stated above however fails to teach finger grips located on the handle. Rimkus teaches a tongue cleaning device comprising finger grips on the handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use finger grips on the handle as taught by Rimkus on Wagner's tongue cleaner to prevent slippage of the device from the user's hand (col. 4, lines 19-37).

13. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama in view of Choy-Maldonado (USPN 5613262); Millner in view of Choy-Maldonado; Rimkus in view of Choy-Maldonado; and Liebel in view Rimkus and further in view of Choy-Maldonado.

Murayama, Millner, Rimkus, and Liebel in view of Rimkus all teach pointed bristles however the references all fail to teach that the bristles have a length greater than 5mm and less than 10mm and that the bristles have a base that is not more than 1mm in diameter. Choy-Maldonado teaches a lingual brush comprising tapered bristles that have a length between 4mm and 6mm. Additionally, by use of ratio it can be assumed that if the bristles in figure 1 are 5mm long then the diameter of the bristles is not more than 1mm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the length of bristles as taught by Choy-Maldonado as the length for the bristles of Murayama, Millner, Rimkus and Libel in view of Rimkus since 4mm-6mm is an appropriate length to remove food, debris from grooves and clean the papillae on the dorsal surface of the tongue (col. 3, lines 55-65).

Allowable Subject Matter

14. Claims 3-4, 6-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Claim 3 includes the limitation that the bristles emanate from the top of the bristle base and the tongue scraper emanated from the top adjacent the bristles. Liebel teaches bristles and a scraper that emanate from the top of the bristle base however Liebel does not teach curved, pointed, varying height bristles. It would not have been obvious to combine Wagner with Liebel to achieve the claimed invention since the structures between the two references vary greatly and a lot of modification would be necessary, destroying the Wagner invention.

Claim 4 includes the limitation that the bristles form two colonies and the colonies are separated by a tongue scraper. Rimkus teaches two colonies of bristles however the colonies are not separated by a scraper nor would it have been obvious to combine references to achieve the claimed invention.

Claim 6 states that the bristle base and bristles are formed from a first material by a first injection molding process and the remainder of the tongue cleaner is formed from a second material by a second injection molding process. The first and second materials are different. Cohen teaches bristles and a base formed by a first process and a handle formed by a second process. However Cohen does not teach bristles that are curved or varying in height. Additionally, Cohen fails to teach a tongue scraper and bristles. It would not have been obvious to one of ordinary skill in the art to combine references to achieve the claimed invention since there would be a lot of modifications, in turn destroying the original invention.

Claim 7 states that the bristle base and bristles are formed from a first material by a first injection molding process and the tongue scraper is formed from a second material by a second injection molding

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process and the handle is formed by a third material by a third injection molding process. The first, second and third materials are different. Cohen teaches bristles and a base formed by a first process and a handle formed by a second process. However Cohen fails to teach three separate injection molding processes. The reference also fails to teach bristles that are curved or varying in height or even that the tongue cleaner has a scraper. It would not have been obvious to one of ordinary skill in the art to combine references to achieve the claimed invention since there would be a lot of modifications, in turn destroying the original invention.


Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Slb
1/28/04


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